MAGISTRATE JUDGE NAN R. NOLAN
219 South Dearborn Street
Courtroom 1858, Chambers 1870
Chicago, IL 60604
(312) 435-5604
Fax (312) 554-8540
Courtroom Deputy - Lynette Santiago
Room 1804
(312) 435-5833

STANDING ORDER SETTING SETTLEMENT CONFERENCE

The Court believes that the parties should fully explore and consider settlement at the earliest reasonable opportunity in the case. For those cases that can be resolved through settlement, early consideration of settlement can allow the parties to avoid unnecessary litigation. This will allow the parties also to avoid the substantial cost, expenditure of time, and distractions that are typically a part of the litigation process. Even for those cases that cannot be resolved through settlement, early consideration of settlement can allow the parties to better understand the factual and legal nature of their dispute. This often can result in focusing and streamlining the issues to be litigated, which again can save the parties considerable time and money.

Consideration of settlement is a serious matter; it therefore deserves and requires serious and thorough preparation prior to the settlement conference. Set forth below are the procedures that the Court will require the parties to follow in preparing for the settlement conference, and the procedures that the Court typically will employ in conducting the conference. For many clients, this will be the first time they have participated in a court supervised settlement conference. **Therefore, counsel are directed to provide a copy of this Standing Order to their clients, and to discuss these procedures with them.**

Counsel are also directed to review the following Seventh Circuit cases which discuss the retention of federal jurisdiction to enforce the terms of a settlement agreement: Blue Cross and Blue Shield Ass'n v. American Express Co., 467 F.3d 634 (7th Cir. 2006) and Shapo v. Engle, 463 F.3d 641 (7th Cir. 2006).

A. SETTLEMENT CONFERENCE PREPARATION

Over 95% of all civil suits are settled prior to trial. Therefore, settlement preparation should be treated as seriously as trial preparation. Planning is essential because the party who is best prepared obtains the best result. The Court has found that the following steps are essential to a successful settlement conference.

1. PRESETTLEMENT CONFERENCE DEMAND AND OFFER. The Court has found that settlement conferences are more likely to be productive if, before the conference, the parties have had a written exchange of their settlement positions and have made a good faith effort to settle the case on their own. Accordingly, **at least fourteen (14) days** prior to the date of the settlement conference, plaintiff's counsel shall serve on defense counsel a letter that sets forth at least the following information: (a) a brief summary of the evidence and legal principles that plaintiff asserts will allow it to establish liability; (b) a brief explanation of why damages or other relief would appropriately be granted at trial; (c) an itemization of the damages plaintiff believes can be proven at trial, and a brief summary of the evidence and legal principles supporting those damages; and (d) a settlement demand.

No later than seven (7) days prior to the settlement conference, defendant's counsel shall serve on plaintiff's counsel a letter that sets forth at least the following information: (a) any points in plaintiff's letter with which the defendant ***agrees***; (b) any points in plaintiff's letter with which defendant ***disagrees***, with references to supporting evidence and legal principles; and (c) a settlement offer. The Court expects that each of these letters typically should be **five pages** or fewer.

Plaintiff's counsel shall fax or deliver copies of these letters to chambers by **no later than four (4) business days** before the conference. **DO NOT FILE COPIES OF THE LETTERS ELECTRONICALLY OR IN THE CLERK'S OFFICE**. The foregoing schedule is designed to ensure that the Court and the parties have enough time to prepare for the conference, and must be followed unless the Court issues an order in the case establishing a different schedule.

2. ATTENDANCE OF PARTIES REQUIRED. Parties with full and complete settlement authority are required to personally attend the conference. This means that if a party is an individual, that individual must personally attend; if a party is a corporation or governmental entity, a representative of that corporation or governmental entity (other than counsel of record) with full and complete settlement authority must personally attend. "Full and complete settlement authority" means the authority to negotiate and agree to a binding settlement agreement at any level up to the settlement demand of the plaintiff. If a party requires approval by an insurer to settle, then a representative of the insurer with full and complete settlement authority should attend or be immediately available by telephone.

The Court sets aside a significant block of time for each settlement conference. The Court strongly believes that the personal presence of the parties, and their direct participation in the discussions and "give and take" that occur, will materially increase the chances of settlement. Thus, absent a showing of unusual and extenuating circumstances, the Court will not permit a client merely to be available by telephone as an alternative to personal presence at the conference. The purchase of an airplane ticket is not an extenuating circumstance. The Court requires that parties attending the conference read the settlement letters exchanged between the parties before coming to the conference.

3. MEDIATION FORMAT. The court will generally use a mediation format: opening presentations by each side followed by a joint discussion and private caucusing by the Court with each side. The Court expects both the lawyers and the party representatives to be fully prepared to participate in the discussions and meetings. In these discussions, the Court encourages all parties to be willing to reassess their previous positions, and to be willing to explore creative means for resolving the dispute.

4. STATEMENTS INADMISSIBLE. Statements made by any party during the settlement conference will not be admissible at trial. Parties are encouraged to be frank and open in their discussions, but to address each other with courtesy and respect.

5. OTHER ADR PROCESSES. If the parties desire private mediation, arbitration, mini-trial or other procedure, they should immediately advise the Courtroom Deputy, who will arrange a conference call with the court to discuss the options.

B. ISSUES TO BE DISCUSSED AT SETTLEMENT CONFERENCE

Parties should be prepared to discuss the following at the settlement conference:

1. What are your objectives in the litigation?

2. What issues (in and outside of this lawsuit) need to be resolved? What are the strengths and weaknesses of your case?

3. Do you understand the opposing side's view of the case? What is wrong with their perception? What is right with their perception?

4. What are the points of agreement and disagreement between the parties? Factual? Legal?

5. What are the impediments to settlement?

6. What remedies are available through litigation or otherwise?

7. Are there possibilities for a creative resolution of the dispute?

8. Do you have adequate information to discuss settlement? If not, how will you obtain sufficient information to make a meaningful settlement discussion possible?

ENTER:

Dated: February 12, 2008

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NAN R. NOLAN
United States Magistrate Judge